

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 197 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy
of the judgement?

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

2 to 5: No

COMMISSIONER OF INCOME-TAX

Versus

GUJARAT STATE FERTILIZERS CO LTD

Appearance:

MR MIHIR JOSHI for MR MANISH R BHATT for Petitioner

MR MANISH J. SHAH for MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and

MR.JUSTICE A.R.DAVE

Date of decision: 23/12/98

ORAL JUDGEMENT (per R. Balia, J.)

At the instance of the Revenue, the following two
questions of law arising out of its order dated 21.1.1982
have been referred to this court for its opinion by the
Income Tax Appellate Tribunal, Ahmedabad Bench 'C', along
with the statement of case.

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that, the assessee was entitled to claim depreciation on roads, culverts, drainage etc. as plants (except those in residential localities) and not as "buildings"?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to claim development rebate on water supply and library books?"

2. So far as the first question is concerned, the Tribunal has, following its earlier decision in ITA Nos. 9184 and 9185/Ahd/75-76 for Assessment Years 1968-69 and 1969-70, held that roads, culverts and drainage, except those in the residential localities, should be treated as plant and not as buildings for the purpose of depreciation. In the assessee's own case for Assessment Year 1978-79 like question was referred for consideration of this court in ITR No. 175/83 which had since been decided and reported in (1996) 216 ITR 550. This court, after detailed discussion, came to the conclusion that roads, culverts and compound walls are an integral part of factory premises and are to be treated as building for the purposes of depreciation and not as plant. Query whether the same can be treated as plant for the purpose of development rebate was left open as the same did not arise out of Tribunal's order for consideration. Regarding drainage, the court was of the opinion that as discharge of effluent is an integral part of operation of the plant, the pumps and drainage pipes are necessary adjuncts of the plant itself and therefore "plant" within the meaning of Sec. 33 of the Act.

3. Following the aforesaid decision in the assessee's own case about the very same assets, we answer question No. 1 partly in favour of the assessee by holding that drainage is a part of plant but roads and culverts, for the purpose of depreciation, can be considered only as buildings and cannot form part of the plant.

4. Question No. 2 relates to two items of assets, namely, water supply and books. This question arises in the light of issue which the tribunal was considering about allowability of development rebate benefit in cases of assets in respect of which, looking to measure of their price, a provision has been made for allowing entire cost as deductible expenses of the year in which

such assets have been acquired rather than subject them to regular depreciation at fixed percentage. Discussion in this respect finds place in Para 16 of the tribunal's order, which is reproduced hereinbelow:-

"The last ground is about the allowance of the development rebate on water supply and library books. The revenue's argument is that the cost of some of these items have not been allowed as revenue expenditure being less than Rs. 750/-, no development rebate was admissible if cost was zero. We do not agree with this because specific provision has been that instead of allowing depreciation on small items at a percentage of the cost, the entire expenditure could be deducted as the depreciation. This does not mean that the asset would vanish. We hold that the development rebate has rightly been allowed."

5. It cannot be doubted and it has not been the dispute before us that both water supply as well as books are plant. Section 33 which provides for development rebate envisages "in respect of a new machinery or plant which is owned by the assessee and is wholly used for the purposes of the business carried on by him, there shall be allowed a deduction in respect of the previous year in which machinery or plant was installed or is first put to use in the immediately succeeding previous year, then, in respect of that previous year, a sum by way of development rebate." The entire reading of sec. 33 does not make the allowance of development rebate in respect of a machinery or plant subject to allowability of depreciation. In fact, development rebate is allowance which is made over and above depreciation allowable in respect of such plant and machinery. The fact that in a given case depreciation is allowed as deduction on a fixed percentage basis every year or in the case of plant and machinery costing less than a specified value entire sum is allowed as deduction in one year by way of expenditure is not a relevant consideration in considering the applicability of the provisions of sec. 33 governing development rebate.

6. In contrast, we find that when the legislature provided for such investment allowance, by inserting sec. 32A, a specific provision was made by excluding such plant and machinery the whole of actual cost of which is allowed as deduction whether by way of depreciation or otherwise in computing the income chargeable under the head "profits and gains from business or profession" from consideration for the purpose of computing investment

allowance. The section had been inserted with effect from 1.4.1976 by the Finance Act, 1976. This also makes clear that where legislature wanted that any benefit not to be extended in case where depreciation or whole of the cost has been allowed by way of deduction either by way of depreciation or otherwise, it has made a specific provision about it.

7. To the conclusion to which we reach, we find support of the decisions in Bralco Metal Industries Pvt. Ltd. v. CIT, 206 ITR 477 and CIT, Kanpur v. Swadeshi Cotton Mills Co. Ltd., 117 ITR 321.

8. As a result of aforesaid discussion, we answer question No. 2 referred to us in affirmative, that is to say, in favour of the assessee and against the revenue.

The reference stands disposed of with no order as to costs.

(hn)